IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3619 OF 2004

Shaikh Mohamad Iqbal ... Petitioner

V/s

1. Ms. Raymitan Vergino Dias
2. Mr. Joseph Verjino Dias ... Respondents

Dr. V. K. Choudhari for the petitioner.

Mr. V.S. Gokhale for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 20TH MARCH, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. This petition is aimed against the judgment and order passed by the Addl. District Judge, Pune, dated 25.11.1997 allowing the appeal of the respondent and setting aside the order passed by the execution Court dated 14.8.1997 in Darkhast No. 366 of 1996 allowing the application Exh.15 made by the present respondent who was in possession of the suit premises and rejecting the claim of the present petitioner that he was the

tenant in the suit premises and, as such, was entitled to enter into the possession of the suit premises.

The application made by the third party for dismissal of the execution and incidental relief came to be rejected by the lower Court which was the order impugned in the lower appellate Court. The judgment debtor was mother of the appellant in that proceeding and Joseph Verjino Dias was the original third party. His father was tenant in the suit premises who died in the year 1991 and was survived by his widow (judgment debtor) and sons including the appellant Joseph. Therefore, the decree holder landlord filed the suit against the judgment debtor for recovery of possession of the suit premises under the provisions of the Bombay Rent Act on the ground contemplated under Sec.13 (1)(g) of the Bombay Rent Act. The suit was contested and decree for eviction was passed against the judgment debtor and the decree was finally confirmed by this Court and thereafter it was sought to be executed by Darkhast No. 366 of 1996. The respondent third party resisted the execution by making an application Exh.15 contending that he was not party to the suit in which decree was obtained against the judgment debtor and the decree was not binding on him. The Trial Court, after hearing both

parties, rejected the application and appeal was preferred. However, the lower appellate Court, after hearing both sides, came to the conclusion that the application of the obstructionist deserves to be allowed and, as such, allowed the appeal. Hence the present petition is filed.

3. In this regard it must be noted that the main question was, whether the mother of the appellant had become tenant of the suit premises after death of her husband. It is to be noted that when tenant died, tenancy rights devolved upon his heirs, but all the heirs cannot claim as the tenants and only one of the legal heirs or family members of the deceased tenant can claim the tenancy as contemplated under Sec. 5(11)(c) of the Bombay Rent Act. Admittedly, the appellant and his brothers were minors at the time of the death of their father and it follows that there could be no valid agreement between all the legal heirs of the deceased tenant. It was therefore clear that the mother of the appellant did not and could not become tenant of the suit premises by an agreement between the family members. The suit was filed by the decree holder in the year 1992 against the mother of the appellant and it was not the case of the decree holder that there was any

agreement between legal heirs of the deceased tenant regarding vesting of tenancy rights. Thus, in absence of any specific plea, the decree holder cannot be allowed to say that the judgment debtor in fact who had been in agreement become tenant of the suit premises after the death of her husband and, as such, unless and until all the legal heirs were made party to the eviction proceeding, it cannot be said that decree was executed on the present respondent even though he was not party to the suit especially when he is one of the legal heirs of the deceased tenant.

4. On this reasoning, the learned lower appellate Court has reached to the conclusion that the decree holder was not in position to prove that the judgment debtor alone was in fact the tenant in law of the suit premises and, therefore, the decree was not binding on the present respondent. I do not see any legal infirmity in the finding recorded by the lower appellate Court and, therefore, hold that the reasoning adopted and findings recorded by the lower appellate Court appears to be just, legal and proper.

5. In the result, it would brook no interference and the petition stands dismissed with no order as to costs.

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